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November 29, 2005

Via Overnight Mail and ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: WPBF-DT, Tequesta, Florida
MB Docket No. 05-317
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

On behalf of WPBF-TV Company ("Hearst"), permittee of Digital Television Station WPBF-DT, Tequesta, Florida, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of WPBF-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

WPBF-DT is the ABC affiliate located in the West Palm Beach Designated Market Area ("DMA"). The West Palm Beach DMA is ranked 38th among Nielsen Media's 210 television markets for the 2005-2006 television season. WPBF-DT has received a tentative digital channel

designation of Channel 16, which is WPBF-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as WPBF-DT.

Pursuant to **Section 339(a)(2)(D)(viii)(IV)** of the Act, Hearst requests a waiver on the basis that WPBF-DT "experiences a substantial decrease in its digital signal coverage due to necessity of using [a] side-mounted antenna."

As certified in its Form 381 filing (FCC File No. BCERCT-20041105ABP), WPBF-DT intends to operate its post-transition DTV station based on its maximized facilities as authorized by its construction permit in FCC File No. BPCDT-19991101AEG. WPBF-DT is currently operating its DTV facility at maximum permissible power from a lower HAAT with a side-mounted antenna as authorized by Special Temporary Authority ("STA") in FCC File No. BMDSTA-20050311AEZ. As previously explained to the Commission in WPBF-DT's request for waiver of the maximization deadline filed on July 1, 2005, it is physically impossible for Hearst to construct its DTV top-mount maximized facility until its top-mount NTSC antenna is removed at the end of the DTV transition.

While WPBF-DT is currently operating its DTV facility at maximum permissible power from the HAAT and side-mounted antenna authorized in its STA, the present operation results in a substantial decrease in its digital signal coverage area compared to its future maximized facility. As previously submitted to the Commission, WPBF-DT's present STA operation is predicted to provide service to 2,359,314 people, while its future operation is predicted to provide service to 2,529,151 people. *See* Hearst Supplement to Maximization Waiver Request, Engineering Statement, MB Docket No. 03-15 (July 1, 2005).

Thus, absent grant of the instant waiver request to prevent signal testing under SHVERA, WPBF-DT is in jeopardy of losing service to 169,837 people who may otherwise be eligible to receive service from a distant network affiliate.

Furthermore, were WPBF-DT to proceed with construction of its maximized facility before the end of the DTV transition, Hearst would have to expend considerable resources to move its NTSC antenna to a lower level on the tower to make room for its DTV antenna. These costs, which would include the cost of purchasing an NTSC side-mount antenna, installation, and reworking the transmission line, would be "sunk costs" in equipment and labor that will only be useful until the DTV transition is complete. In addition, completion of WPBF-DT's maximization facility before the end of the DTV transition would require Hearst to lower WPBF's NTSC antenna, resulting in a loss of NTSC service to approximately 82,246 people. *See id.*

Ms. Marlene H. Dortch
November 29, 2005
Page 3

Accordingly, because WPBF-DT experiences a substantial decrease of 169,837 people in its digital signal coverage area due to the present side-mount installation of its DTV antenna and because construction of its maximized facility prior to the end of the DTV transition would result in a substantial loss of NTSC service, WPBF-DT satisfies the waiver criterion of Section 339(a)(2)(D)(viii)(IV) of the Act.

For the reasons stated herein, Hearst requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in black ink, appearing to read "David Kushner", with a long horizontal flourish extending to the right.

David Kushner
Coe W. Ramsey
Counsel to WPBF-TV Company

cc: Via Hand-Delivery
Nazifa Sawez
Federal Communications Commission
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